

# BOARD OF PESTICIDES CONTROL

**January 20, 2006**

Board Rooms, Senator Inn & Spa  
284 Western Avenue, Augusta

## AGENDA/MINUTES

**9:30 A.M.**

Chair Carol Eckert called the meeting to order at 9:35 A.M. Other members in attendance included Bradstreet, Humphreys, Jemison, Simonds and Walton. Berry was unable to attend. Assistant Attorney General Mark Randlett was also present.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves including Paul Schlein who was recently hired as the Board's Public Information Officer.

2. Minutes of the October 28, 2005 Board Meeting

Action Needed: Amend and/or Approve

- ☒ Bradstreet/Jemison: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

3. Workshop Session to Prepare a New Draft of Proposed Chapter 26

At the October meeting, the Board voted to abandon the second round of rule-making to adopt a proposed rule Chapter 26 to set standards for pesticide applications and notification for all occupied buildings except K-12 schools. The members concluded that the proposed rule needed major revisions and agreed staff should continue to develop an alternate proposal that would require initiating a new rule-making process. They requested that staff come back to this meeting with further revisions of the proposed rule and examples of proposed notices, policy on public health pests, an indoor registry and universal logo.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Discussion and determination if the members are ready to initiate a third round of rule-making on a new proposal.

- ☒ Batteese walked the members through the staff memo of November 22, 2005 and responded to comments and questions. Humphreys lamented not establishing an indoor registry and Eckert agreed it was important but should not be attempted at this

at this time. There was agreement that eliminating the requirement to provide notice to hospital and nursing home patients was appropriate. Batteese advised that a pest control operator had suggested including crack and crevice treatments in the list of exemptions in Section 2.B. There was agreement that it would not be proper to make that change since people would see applicators carrying sprayers and wonder what was happening. In regard to the proposed format for the poster, Simonds observed that the size of the Board's logo made it look like the Board would be making the application. Bradstreet recommended adding lines to write in the date it was posted and the name of the person posting it. It was agreed these changes should be incorporated with the logo being made much smaller and moved to the bottom section where the Board's telephone number was displayed. There was also agreement the use of the universal logo should remain voluntary because it isn't an adequate substitute for notification to long-term occupants. Eckert polled the members and found consensus that the staff should initiate rule-making after making the requested revisions to the poster.

4. Interim Report from the Environmental Risk Advisory Committee

The Joint Standing Committee on Agriculture, Conservation and Forestry carried over to the 2006 session LD 1657 An Act to Minimize the Risk to Maine's Marine Waters and Organisms Posed by the Application of Pesticides. In the meantime, they requested the Board to evaluate ongoing studies of the potential for pesticides to cause adverse effects on lobsters and report back to them by January 2, 2006. At its July 29th meeting, the Board reconstituted its Environmental Risk Advisory Committee (ERAC) with two new standing members and five *ad hoc* members with expertise in marine life biology, oceanography and pesticide drift issues. The ERAC has met five times to review a wide range of information that will be shared with the Board at this meeting. Because there are still many issues to address, the Board received support from the Executive Director of the Maine Lobsterman's Association and submitted an interim report in January and delayed a final report until March.

Presentation By:      Lebelle R. Hicks, PhD DABT  
                                 Pesticides Toxicologist

Action Needed:        Discussion of findings by ERAC and initial discussion on what  
                                 information should be included in the final report to the Joint  
                                 Standing Committee on Agriculture, Conservation and Forestry.

- ☒ Hicks reported the Joint Standing Committee on Agriculture, Conservation and Forestry had extended the deadline for the Board's report to February 13<sup>th</sup>. She advised the ERAC would be meeting on January 24<sup>th</sup> to finalize their recommendations. Humphreys noted it had been very helpful to have Berry on the ERAC and also thanked Hicks for assembling a great team to work on this issue. Batteese noted the need for the Board to hold a special meeting before February 13<sup>th</sup> to finalize its report and it was agreed that 3:00 P.M. on January 27<sup>th</sup> was the time the most members could be present.

5. Section 18 Emergency Registration Request for Propiconazole to Control Mummy Berry Disease in Blueberries

For several years, the Board has petitioned EPA for a FIFRA Section 18 specific exemption for use of propiconazole (Orbit 3.6E) to control Mummy Berry disease in wild blueberries. Because it still appears that a full FIFRA Section 3 label will not be approved in time for the 2006 growing season, the Cooperative Extension Blueberry Specialist has requested that the Board again petition EPA for a Section 18 Specific Exemption registration for propiconazole. He points out this is necessary because there are no effective alternatives to control Mummy Berry and a heavy infestation could cause significant economic losses to Maine growers.

Presentation By: Wesley C. Smith  
Pesticides Registrar

Action Needed: Approve/Deny request to petition EPA for a Section 18 Specific Exemption registration for propiconazole for blueberries.

- ☒ Smith reminded the members that Syngenta had submitted the data to support a tolerance to EPA in 1997 and that there was hope the agency would finally approve a full registration later this year. In the meantime, there was little choice but to petition for another Section 18 registration.

Walton/Jemison: Motion made and seconded to petition EPA for a Section 18 Specific Exemption registration for propiconazole for blueberries.

In Favor: Bradstreet, Eckert, Jemison, Simonds and Walton  
Opposed: Humphreys

5A. Section 18 Emergency Registration Request for Environ LpH Germicide to Control Prions on Hard Surfaces

Idexx Laboratories of Westbrook has requested the Board to petition EPA for a FIFRA Section 18 specific exemption for use of Environ LpH Germicide to control prions on hard laboratory surfaces. Prions are protein-based infectious particles that are thought to cause various transmissible spongiform encephalopathies including Chronic Wasting Disease in deer and elk, scrapie in sheep and Cruetzfeldt-Jacob Disease in humans. This laboratory is participating in state and federal surveillance programs for these diseases and needs to be able to completely decontaminate the hard surfaces of their facility. The Department's State Veterinarian and the United States Department of Agriculture's Area Veterinarian both support this request and point out there are currently no registered products to inactivate prions on hard surfaces such as counters and floors. EPA has already approved similar Section 18 registrations in states including California, Colorado, South Dakota, North Dakota, Utah and Wyoming.

Presentation By: Wesley C. Smith  
Pesticides Registrar

Action Needed: Approve/Deny request to petition EPA for a Section 18 Specific Exemption registration for Environ LpH Germicide to control prions on hard surfaces.

- ☒ Smith advised this was a new request that would allow the laboratory to gear up to analyze animal samples for Chronic Wasting Disease. Walton asked about disposal of wastes and Smith assured him the Department of Environmental Protection was okay with this issue.

Jemison/Walton: Motion made and seconded to petition EPA for a Section 18 Specific Exemption registration for Environ LpH Germicide to control prions on hard surfaces.

In Favor: Unanimous

6. Request from Training Development Corporation for Grant to Help Support a Worker Protection Safety Training Program for Summer 2006.

Since 1995, the Board has supported a Migrant and Seasonal Farmworker Program conducted by the Training and Development Corporation (TDC) of Bucksport. During this past year, a total of 995 hours of service was provided to migrant and seasonal nursery workers in western Maine, blueberry workers in eastern Maine and broccoli workers in northern Maine. TDC is planning to again work in partnership with the Maine Migrant Health Program to host one AmeriCorps member and one Health Educator during the 2006 agricultural season. The staff will point out the total cost will be the same as for the past year and that amount has been budgeted in the Board's FY '06 work plan.

Presentation By: Jack Frost  
TDC Project Manager

Action Needed: Discussion and determination if the members wish to fund this grant request.

- ☒ Frost made a brief presentation pointing out that the Board's grant would provide matching funds to help hire one six month member and one Maine Migrant Health intern to work in the agricultural areas of the State. Bradstreet noted the trend for Maine farmers to hire more migrant workers, and Batteese pointed out the current budget could accommodate the cost of \$3,465.

Simonds/Humphreys: Motion made and seconded to have the staff fund this grant request.

In Favor: Unanimous

7. Revisions to Chapter 60 Application for a Critical Pesticide Control Area Designation

On March 18, 2005, the Board held a public hearing to consider an amendment to Chapter 60 to exclude a single person or family with health concerns from being eligible to seek a critical pesticide control area designation. Considerable opposition was

expressed and the Board voted at the April 15<sup>th</sup> meeting to abandon the proposed amendment. Instead the members asked the Medical Advisory Committee (MAC) to offer recommendations on scientific criteria for medical records and exposure data. The members reviewed information from the MAC at the September 28<sup>th</sup> meeting and asked staff to work with the Office of the Attorney General to revise the application and bring it back to a future meeting. The proposed revisions require petitioners to submit letters or reports from two medical providers certified by the American Board of Medical Specialists in appropriate categories as determined by the MAC. In addition, the petitioner will be required to acknowledge that all of the medical information submitted will be discussed by the Board and affected parties in a public hearing and other meetings open to the general public.

Presentation By:      Lebelle R. Hicks, PhD DABT  
                                 Pesticides Toxicologist

Action Needed:        Discussion and decision if the members wish to adopt the proposed revisions to the Chapter 60 application.

- ☒ Hicks reminded the members this topic resulted from recommendations from the Medical Advisory Committee to better define the types of information that an applicant would have to submit before the Board would consider their petition complete. Eckert recommended adding to the first bullet under Medical/Toxicity Information the American Osteopathic Association as a second group to certify medical providers. She noted that if adopted, the Board would not accept information from nontraditional providers. Randlett pointed out that the signature section would notify applicants that their medical records would be public information.

Bradstreet/Simonds: Motion made and seconded to adopt the application with the addition of the American Osteopathic Association.

In Favor: Unanimous

8.      Enforcement Action Against Maine Helicopters, Inc. of Whitefield

The staff will detail the results of its investigation into a complaint from the staff at Blue Barrens Farm in Columbia that a helicopter applying the fungicide Orbit to a blueberry field opposite Pea Ridge Road flew over and drifted onto their property. Foliage samples taken 10 and 20 feet from the front of the farmhouse showed the presence of propiconazole at 4.11 and 9.33 parts per million (ppm) while foliage samples from the treated field showed concentrations of 7.44 and 11.7 ppm. Because the residue levels on the complainant's property exceeded 20% of the level on the target site, there is *prima facie* evidence of a drift violation under the Board's Chapter 22 regulation. The staff is recommending this case be formally referred to the Office of the Attorney General because one Board member is an employee of this spray contracting firm.

Presentation By:      Henry S. Jennings  
                                 Chief of Compliance

Action Needed: Decision on appropriate enforcement response.

- ☒ Jennings explained that the staff had thoroughly investigated the complaint, but because it involved a company associated with a Board member, was recommending that the Board refer the case to the Attorney General to determine if a violation occurred. In response to a question from Simonds, Randlett advised the members that this situation was covered in the Board's Enforcement Protocol. He also indicated that he had already offered Maine Helicopters, Inc. a consent agreement to settle the case rather than having the staff perform this usual action.

Humphreys/Simonds: Motion made and seconded to refer this case to the Office of the Attorney General for an appropriate enforcement response.

In Favor: Unanimous

9. Development of an Interim Compliance Policy to Eliminate the Chapter 27 Five-Day Notice Requirement for Powered Applications to Control Mosquito-borne Diseases (West Nile, EEE, etc.)

This fall the Board's staff received inquiries from two school districts and two commercial applicators in southern Maine that were receiving pressure from parents to treat school grounds to control mosquitoes. This occurred after two horses and one bird in York County tested positive for Eastern Equine Encephalitis (EEE) virus. The current Chapter 27 regulation exempts applications of ready-to use general use pesticides by hand or with non-powered equipment to control biting insects when there is an urgent need to mitigate or eliminate a pest that threatens the health or safety of a student, staff member or visitor from the notification requirements. The staff is recommending the Board consider exempting powered applications for mosquito control from the notification requirements when the Maine Center for Disease Control and Prevention (formerly Bur. of Health) identifies arbovirus positive mosquitoes, birds or mammals in the area.

Presentation By: Gary Fish  
Certification and Licensing Specialist

Action Needed: Discussion and determination if the Board wishes to adopt an interim compliance policy to eliminate the Chapter 27 five-day notification requirement for powered applications.

- ☒ Fish explained that the need for this policy resulted from concerns about the presence of EEE in southern Maine. He noted two school districts had cancelled athletic events and that some spraying had likely been done in violation of the Chapter 27 Notification Requirements. He pointed out the Maine Center for Disease Control would first have to make a recommendation that pesticides should be used. He also noted the applicator would still need to get an aquatic discharge permit for DEP.

Bradstreet/Simonds: Motion made and seconded to adopt the interim compliance policy to eliminate the Chapter 27 five-day notification requirement for powered applications.

In Favor: Unanimous

10. Consideration of Staff Negotiated Consent Agreement with Penobscot Valley Country Club of Orono

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved two applications of pesticides during the summer of 2004 to the turf at the Penobscot Valley Country Club that is considered a place open to use by the public. At the time of these applications, no company employee was licensed as a commercial applicator. These actions constitute a violation of the Board's statute requiring that a licensed applicator be present whenever custom applications are conducted.

Presentation By: Henry S. Jennings  
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained that the problem resulted from a turnover in personnel. Their lack of a license became obvious when new staff applied to take exams but then never appeared to take them.

Jemison/Simonds: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

11A. Request from U.S.D.A. Wildlife Services Office for Renewal of Permit to Control Vertebrate Animals in Outdoor Settings

The Maine Board of Pesticides Control Statute contains a general provision making it unlawful to kill vertebrate animals. However, it authorizes the Board to grant permits to agents of the U.S. Fish and Wildlife Service (USF&W) for the purpose of controlling pest problems. In addition, the statute provides an exemption for the control of rats and mice on public and private property including buildings and municipal dumps, and the control of English Sparrows, starlings and pigeons within buildings. The U.S.D.A. Director of Wildlife Services for Maine already holds a permit to control such species from USF&W, and is seeking a permit from the Board to allow outdoor applications of pesticides to control these pests on farms and in municipal and industrial settings. In February of 2003 the Board renewed his permit for three years after receiving additional information about his agency's use of integrated pest management practices and efforts to protect non-target species. He is now asking that his permit be renewed for another three- year period so he may take care of future problems as they arise.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Approve/disapprove a three year permit renewal to the U.S.D.A. Director of Wildlife Services to use pesticides in outdoor settings for controlling vertebrate animals covered by his U.S. Fish and Wildlife Service Special Purpose permit.

- ☒ Batteese reported the Board had previously approved the permits on a three-year basis with a condition that the agency notify the Board in advance of each application. He pointed out that both Ed Butler and Robin Dyer from USDA had faithfully notified staff and were present if the members had any specific questions for them.

Humphreys/Bradstreet: Motion made and seconded to approve a three-year permit renewal to the U.S.D.A. Director of Wildlife Services to use pesticides in outdoor settings for controlling vertebrate animals covered by his U.S. Fish and Wildlife Service Special Purpose permit.

In Favor: Unanimous

11B. Approval of 2006 Blueberry Pest Management Plan for Deblois Critical Pesticide Control Area

In March 1998, the Board adopted an amendment to Chapter 60 to protect the water supply for a state owned fish hatchery in Deblois from pesticide drift and runoff from surrounding blueberry fields. This critical pesticide control area still encompasses all land within 1,000 feet of the hatchery and its rearing pools and the tributary water supplies to both facilities. The rule was restructured to require that pesticide applications be made according to a Board approved pest management plan that may be updated on a regular basis without having to resort to rulemaking each time new products or technologies become available. In 2004 after three members visited the site, the Board approved a revised plan for the major landowner that only restricts specific pesticide use within a 500-foot radius of the spring pool and 250 from the stream. However, the plan also specifies the remaining land in the critical area will be treated according to Best Management Practices for Wild Blueberry Production. The Board has also conditioned plans for the past two years with a requirement that Jasper Wyman & Son submit a drift management plan for the entire area. The company has already submitted a drift management plan for this year.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Approve/disapprove the pest management plan submitted for Jasper Wyman & Son.

- ☒ Batteese informed the members that the Department of Inland Fisheries and Wildlife still owned the fish hatchery and hoped to sell it in the coming year as an operational facility. He noted that Wymans had submitted both a Pest Management Plan and a Drift



Management Plan for the critical pesticide control area. Humphreys asked if the vegetative buffers the three Board members had viewed in 2004 were still present. Travis Drake of Jasper Wyman & Son responded that they were definitely still there and growing larger every year.

Bradstreet/Simonds: Motion made and seconded to approve the pest management plan submitted for Jasper Wyman & Son.

In Favor: Unanimous

11C. Election of Officers

The Board's statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Nominations and election of officers.

- ☒ Batteese noted it was time for the annual election of officers. Humphreys observed that the current slate had performed well and nominated Eckert for Chair and Berry for Vice-Chair. No additional nominations were forthcoming.

Humphreys/Walton: Motion made and seconded to approve Eckert for Chair and Berry for Vice-Chair for the coming year.

In Favor: Bradstreet, Humphreys, Jemison, Simonds and Walton  
Abstain: Eckert

12. Other Old or New Business

a. 2005 Pesticide Product Registration Summary – W. Smith

- ☒ Smith explained it was his usual summary report and pointed out the number of products registered was up 2.98% over 2004.

b. Hiring of Half-time Public Relations Representative – R. Batteese

- ☒ Batteese stated the staff was glad to have Paul Schlein on board but noted that at only 20 hours per week Schlein would barely have time to keep the website updated and assist with the YardScaping program.

c. Legislative Update – R. Batteese

- ☒ Batteese briefed the members on his presentations to the Joint Standing Committee on the Program Evaluation Report and the Interim ERAC Report. He asked the members to review the draft testimony for LD 1791 and LD 1890. Eckert surveyed the members and found consensus that they supported the testimony and did not see a

need for additional members on the Board.

d. Other ???

☒ Batteese informed the Board that representatives of the Toxics Action Center and Environment Maine had submitted three petitions seeking (1) a ban on agricultural aerial application, (2) a ban on agricultural applications of organophosphate pesticides and (3) a repeal of the \$20 fee for persons to be on the Pesticide Notification Registry. He explained that the Board had to initiate rule-making within 60 days so the members would need to make decisions about a time and place at the next Board meeting.

13. Schedule and Location of Future Meetings

a. Date and location for the next meeting.

☒ The Board scheduled the next meeting for Friday, February 24<sup>th</sup> to begin with a public hearing on proposed Chapter 26.

b. Date and location for the following meeting.

☒ The Board tentatively scheduled the following meeting for Friday, March 31<sup>st</sup> to be preceded by a public hearing Thursday evening, March 30<sup>th</sup> and at the start of the meeting Friday morning.

Adjourn

☒ A motion to adjourn was accepted at 12:17 P.M.

Robert I. Batteese, Jr.  
Director